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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/762,044	02/01/2001	Reinhold Stadler	49248	7928

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EXAMINER	
LEVY, NEIL S	

ART UNIT	PAPER NUMBER
1615	

DATE MAILED: 07/20/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/762,044	STADLER ET AL.	
	Examiner	Art Unit	
	NEIL LEVY	1615	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *30 June 2006*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1,2,8-10,16 and 20* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1,2,8-10,16,20* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

The finality of the rejection of the last Office action is withdrawn.

Claim Rejections - 35 USC § 103

Claims 1,2,8-10,16 & 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Saur- CA 2178655

The rejection of record is re-instated .

The compositions - are shown by Saur, although the heat input, or heat input /kg of polymer is not identified. The same polymers, carriers, actives & coating steps are used by Saur, to arrive at the claimed intended use (preamble of claims 1 & those adapted as of claim 9) compositions, with the same process steps of use of fluidized bed & control of input, output temperatures, resident temperatures , resident time & gas flow. However, according to applicant's response of 3/08/06, it is not possible to determine gas flow volume in Saur. That being the case, the Stadler declaration is seen as presumptive, as the stated gas flow volumes, from which the heat input is calculated, were not actually determinable from the Saur patent. Therefore there remains a question as to the CR granules of Saur being 1) of lower heat input & 2) of different leachability than the instant CR's. S ince Saur shows extended duration of effect of the CR's @ examples 1,2, we find it evident that leachability was reduced as in the instant CR, since at harvest, wheat was well protected .

As stated in the European examination report, the prior art parameters were used in preparation of the instant CR . The claimed heat inputs, & those shown @ example 12 of the instant specification were calculated after The parameters , those also used in the prior art, were measured. The argued for advantageous results, distinguishing over

Saur, are the reduced leaching, as presented by applicant in the response of 3/08/06; here it is argued that increased heat input is associated with decreased leaching; @ example 12, it is stated that this is demonstrated by release rate decreased when heat input is doubled. Perusal of the table 14 a does show this for exmples 1 vs 5, but this does NOT apply to the heat input /kg polymer. Neither is it seen at samples2,3,4 – here, although heat input is as little (sample 4) ½ of that of sample 1, the leaching rate is only 1/10 of that of sample 1 – contrary to applicant 's assertions of decreased leaching a function of INCREASED heat input. Thus, the compositions & application processes of Saur are seen to constitute those of the instant invention, absent only the post hoc calculation of the heat inputs.

There remains the issue of phytotoxicity- the instant claims are not claiming any such efficacy, nor is there any evidence in the specification of a given level of phytoxicity , or lack thereof, achievable when correlated with or determined by, adjustment of heat inputs.

It would have been obvious to a person of ordinary skill in the art at the time the invention was made, desiring to utilize a CR for long term protection of plants, to make one of Saur, modified to optimize protection of the desired material by

preparing the desired number of layers of polymer with selection of the specific polymer, carrier, pesticide, and means of preparation , dependent upon the pests to be protected from, & duration of effect required.
All the material elements & process steps of the instant'invention are disclosed.
It has not clearly been established by an objective showing of some additional unusual and/or unexpected result that the preparation of the particular CR form, delivery method or target provides any greater level of prior art criticality or expectation as claimed.

Applicant's arguments filed 6/3/06 have been fully considered but they are not persuasive. Although applicant fully expected allowance, reconsideration has resulted in data interpretation leading to recognition of the Saur reference as providing the material elements of the instant invention, applied in the same manner or processes, with determination of the same goals, increased duration of effect, obvious for the artisan to attain, without the mathematical calculation of heat inputs. Reduced phytotoxicity is not claimed. The soil – application CR granule is seen as intended use, and not as a limitation of the instant claims, as this language is in the preamble. The carrier used in the calculations of heat inputs were NP 20/20 for examples 1-4, & urea for example 5; it's not clear that the 2X heat input with associated leaching improvement is not a function in part of the difference in the carriers. NP20/20, the actives, & polymers are those of Saur, at the same ratios & sizes, & applied @ the same rates

We find no novelty in the correlation of heat inputs with effects, over the CRs of the same compositions, & made under the same parameters as those of the prior art.

Further, we find the heat input of the polymer not to be correlated with leaching; that of sample 1 is 16000, with Comp. 6 leaching rate higher than sample 5, with a 15,000 heat input /kg of polymer.

In claim 2, line 2, "of " seems to be a typo.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to NEIL LEVY whose telephone number is 571-272-0619. The examiner can normally be reached on Tuesday-Friday, 7 AM to 5:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, MICHAEL WOODWARD can be reached on 571-272-8373. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

NEIL LEVY
Primary Examiner
Art Unit 1615